

In the Matter of Merchant Mariner's Document No. Z-967462-D1 and  
all other Seaman Documents

Issued to: John K. Chun

DECISION OF THE COMMANDANT  
UNITED STATES COAST GUARD

1368

John K. Chun

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

By order dated 12 July 1962, an Examiner of the United States Coast Guard at San Francisco, California suspended Appellant's seaman documents upon finding him guilty of misconduct. The sole specification alleges that while serving as engine yeoman on board the United States SS MARIPOSA under authority of the document above described, on 24 May 1962, Appellant wrongfully battered a crew member, Robert, L. Bumpus. Bumpus was similarly tried and the hearings were consolidated for the purpose of taking evidence.

Appellant entered a plea of not guilty to the charge and specification.

After considering the evidence, consisting of the testimony of two participants as well as that of two other seamen and several documentary exhibits, the Examiner rendered the decision in which he concluded that the charge and specification had been proved. An order was entered suspending all documents issued to Appellant for a period of two months. Bumpus received the same order.

FINDINGS OF FACT

On 24 May 1962, Appellant was serving as engine yeoman on board the United States SS MARIPOSA and acting under the authority of his Merchant Mariner's Document No. Z-967462-D1.

Between 2300 and 2350 on that day, Appellant and electrician Bumpus engaged in a fight with each other, using their fists. Both received minor facial injuries for which they received treatment on the ship.

Appellant has no prior record.

Appellant urges that he acted in self-defense and that the two months' suspension is too severe.

No disinterested eyewitness to the fight was called to testify at the hearing. There is no question, however, that a fight between the two persons occurred. The only difficulty presented in this case is the fact that Appellant and Bumpus disagree as to which person was the aggressor. Each claims that the other struck the first blow.

Whenever there are conflicts in testimony the findings of the Examiner resolving these conflicts will be upheld unless they are arbitrary and capricious. Commandant's Appeal Decision No. 791. The reason for this rule is that the Examiner, as trier of the facts, sees and hears the witnesses and thus is in a better position to judge their credibility. See Elwert v. United States. (CA 9th Cir. 2956) 231 F. 2d 928, 934. The Examiner concluded that each struck the other without justification and, therefore, that they were both equally guilty of mutual combat. Since there is no reason to reject these conclusions of the Examiner, the conflicting plea of self-defense cannot prevail.

Appellant's second contention that the order of the Examiner suspending Appellant's documents for two months is too severe is without merit.

#### ORDER

The order of the Examiner dated at San Francisco, California, on 12 July 1962, is AFFIRMED

B. J. ROLAND  
Admiral, U. S. Coast Guard  
Commandant

Signed at Washington, D. C., this 20th day of February 1963.